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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,204	01/20/2004	Akira Shimizu	NIT-407	7747
<div>7590 02/01/2008 Mattingly, Stanger & Malur, P.C. Suite 370 1800 Diagonal Road Alexandria, VA 22314</div>			<div>EXAMINER FRANKLIN, RICHARD B</div>	
			<div>ART UNIT 2181</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE 02/01/2008</div>	<div>DELIVERY MODE PAPER</div>

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/759,204

Applicant(s)

SHIMIZU ET AL.

Examiner

Richard Franklin

Art Unit

2181

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2 and 8-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2 and 8-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

1. Claims 2 and 8 – 10 are pending.

Response to Arguments

2. Applicant's arguments, see pages 6 – 7, filed 17 December 2007, with respect to the rejection(s) of claim(s) 8 – 10 have been fully considered and are persuasive.

Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made below.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 2 and 8 – 10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 2 is drawn to a computer executing a first and second program. Since, applicant has not provided an explicit and deliberate definition in the specification or explicitly stated in the claim that "a computer", "a first program", and "a second program" are the combination of software code and hardware, the claim when taken as a whole is believed to reasonable be interpreted as software, per se, which is non-statutory subject matter. The specification describes all of the claimed subject matter as being performed

by a program, and is silent on whether the computer is implemented using hardware and software.

Claim 8 – 10 are drawn to a method of issuing a request from a computer to a storage apparatus over a network using a first and second program. Since, applicant has not provided an explicit and deliberate definition in the specification or explicitly stated in the claim that “a computer”, “a first program”, and “a second program” are the combination of software code and hardware, the claim when taken as a whole is believed to reasonable be interpreted as software, per se, which is non-statutory subject matter. The specification describes all of the claimed steps of the method as being performed by a program, and is silent on whether the computer is implemented using hardware and software.

Allowable Subject Matter

4. Claims 2 and 8 – 10 would be allowable if rewritten or amended to overcome the rejection(s) under 35 USC 101, set forth in this Office action.

5. The following is an examiner's statement of reasons for allowance:

Claim 2 is would be allowable because of the reasons set forth in the previous office action mailed 17 September 2007.

Claims 8 – 10 are would be allowable because applicant has amended independent claim 8 to include subject matter indicated to be allowable by the Examiner

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in the previous office action mailed 17 September 2007 if rewritten in independent form including the limitations of the base claim and any intervening claim.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Franklin whose telephone number is (571) 272-0669. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alford Kindred can be reached on (571) 272-4037. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Richard Franklin
Patent Examiner
Art Unit 2181


Patent Examiner
1/31/2008